

CHAPTER 5 TAX ON RECORDATION OF DEEDS

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500 GENERAL PROVISIONS

- 500.1 The provisions of §§501 through 514 of this chapter are adopted under the authority vested in the Council of the District of Columbia in §317 of Pub. L. 87-408, (also referred to in this chapter as the "Act"), approved March 2, 1962, as amended; D.C. Code §45-937 (1981).
- 500.2 For the purposes of this chapter, the words, terms, and phrases defined in the Act shall have the same meanings when used in this chapter, unless otherwise required by the context of this chapter.
- 500.3 When used in this chapter, the term "Deputy Chief Financial Officer" shall mean the Deputy Chief Financial Officer of the Office of Tax and Revenue ("Office"), or the Deputy Chief Financial Officer's lawfully appointed agent, representative, or designee.
- 500.4 When used in this chapter, the term "Recorder of Deeds" shall mean the Recorder of Deeds of the District of Columbia, or his or her lawfully appointed agent, representative, or designee.

- 500.5 For the purposes of the Act, the term “parent” means a person who is the natural parent of a child or a person who has legally adopted a child. The term “child” includes both minor and adult children.
- 500.6 For the purposes of the Act, the term “new real estate construction” means the development or improvement of a structure located upon or attached to land, including any improvement, restoration, addition to, or rehabilitation of any existing structure, if the value of the improvement, restoration, addition, or rehabilitation exceeds fifty percent (50%) of the assessed value of any structure existing prior to the improvement, restoration, addition, or rehabilitation.
- 500.7 The provisions of §§515 through 526 are adopted under §2(c)(3) of the District of Columbia Recordation of Economic Interests in Real Property Tax Amendment Act of 1989 (hereinafter referred to as the “Recordation of Economic Interests Act”).
- 500.8 For the purposes of the “Recordation of Economic Interests Act,” the term “Holds real property” means the ownership by a corporation, partnership or trust of real property located in the District of Columbia and leases for more than ninety-nine (99) years of real property located in the District of Columbia.

AUTHORITY: Unless otherwise noted, the authority for this chapter is §314 of Pub. L. 87-408, approved March 2, 1962, as amended, D.C. Code §45-937 (1981 Ed.).

SOURCE: Commissioners' Order 62-751 effective April 26, 1962, 8 DCR 278 (May 14, 1962); as amended by Final Rulemaking published at 36 DCR 8653 (December 29, 1989).

501 EXEMPTIONS FROM THE RECORDATION TAX

- 501.1 In addition to the exemptions specifically enumerated in §302 of the Act, as amended (D.C. Code §45-922), the exemptions set forth in this section shall apply to the tax.
- 501.2 Deeds transferred under wills and leases shall be exempt from the tax.
- 501.3 The exemption of deeds to property transferred by the United States or the District under §302 of the Act (D.C. Code §45-922(2)) shall include deeds to property acquired by an agency or instrumentality of either government, and shall also include deeds to property sold by the District for delinquent District real property taxes.

SOURCE: Commissioners' Order 62-271 effective 26, 1962, 8 DCR 278 (May 14, 1962); as amended by Final Rulemaking published at 27 DCR 4929 (November 7, 1980), incorporating text of Proposed Rulemaking published at 27 DCR 3347 (August 1, 1980).

502 PAYMENT OF THE RECORDATION TAX

- 502.1 The basis for the tax is the recordation of a deed and, except as otherwise provided in the Act or this chapter, the tax must be paid at the same time the deed is submitted for recordation.

- 502.2 The measure of the tax is the consideration for the property conveyed by the deed.
- 502.3 In accordance with §304 of the Act (D.C. Code §45-924), if there is no consideration for the property which is the subject of a deed, or where the consideration is nominal, consideration shall be construed to be the fair market value of the real property involved.
- 502.4 The term "consideration," as defined in §302 of the Act, as amended, (D.C. Code §45-921(5)), includes consideration actually paid or ultimately required to be paid for real property, whether that consideration is in the form of cash or is in some other form.

SOURCE: Commissioners' Order 62-751 effective April 26, 1962, 8 DCR 278 (May 14, 1962).

503 RECORDATION TAX RETURNS

- 503.1 Except as otherwise specifically provided in this chapter, each deed submitted to the Recorder of Deeds for recordation on or after May 1, 1962, shall be accompanied by a return under oath, executed by all the parties to the deed.
- 503.2 In the case of a party to a deed who is unable to execute a return by reason of minority or other disability, the return shall be executed by the person or persons duly authorized to act for and on behalf of the party under disability, and the person or persons executing a return on behalf of such a party shall be liable for payment of the tax imposed upon the deed.
- 503.3 Returns shall be in such form or on a form as the Deputy Chief Financial Officer, in consultation with the Recorder of Deeds, shall prescribe.
- 503.4 Each return shall set forth the consideration for the property, the amount of tax payable, if any, and other information required by the Deputy Chief Financial Officer.
- 503.5 In the case of a deed for which exemption from the tax is claimed, the return shall show the basis for exemption.
- 503.6 If exemption is claimed under D.C. Code §45-922(3) or §45-922(4), the return shall also show the purpose or purposes for which the property was acquired and shall be accompanied by all documents and other information that the Deputy Chief Financial Officer deems necessary to determine the exempt or taxable status of the deed.

SOURCE: Commissioners' Order 62-751 effective April 26, 1962, 8 DCR 278 (May 14, 1962).

504 RECORDATION OF DEEDS WITHOUT FILING A RETURN

- 504.1 Except as otherwise provided in this section, the following exempt deeds may be accepted for recordation without the filing of a return:

- (a) A deed to property acquired by the United States or the District of Columbia or by an agency or instrumentality of either;
 - (b) A tax deed executed by the District of Columbia government pursuant to the provisions of law pertaining to the assessment and collection of District of Columbia real property taxes;
 - (c) Any deed, the sole purpose of which is to release property which is security for a debt or other obligation; and
 - (d) Tax deeds.
- 504.2 The submission of a deed for recordation without a return shall constitute a representation by the parties to the deed that the deed, in all respects, meets the requirements of the Act and this section.
- 504.3 Notwithstanding the provisions of §§504.1 and 504.2, the Recorder of Deeds, in any case where a deed is submitted for recordation without a return, may reject the deed for recordation unless a return is filed if, in his or her judgment, it appears from the deed or other information in the possession of the Recorder of Deeds that the deed does not conform with the provisions of this section and that a return is required for the purpose of determining whether the deed is, in fact, exempt from tax.
- 504.4 If the Recorder of Deeds rejects a deed for recordation under §504.3, he or she shall notify the Deputy Chief Financial Officer of the action and the deed shall be reviewed by the Deputy Chief Financial Officer to determine its status.
- 504.5 If the Deputy Chief Financial Officer concludes that a return is required, the Deputy Chief Financial Officer shall notify the parties to the deed at the addresses shown on the statement accompanying the deed, and the parties shall file a return.
- 504.6 The Deputy Chief Financial Officer shall then determine whether the deed is exempt or taxable, and (if taxable) the amount of tax, and shall notify the Recorder of Deeds of the determination.
- 504.7 If the deed is otherwise recordable, the Recorder of Deeds shall record it upon its presentation and payment of any tax determined by the Deputy Chief Financial Officer to be due.

SOURCE: Commissioners' Order 62-751 effective April 26, 1962, 8 DCR 278 (May 14, 1962); as amended by Commissioners' Order 62-903 effective May 29, 1962, 8 DCR 307 (June 11, 1962); by Final Rulemaking published at 27 DCR 4929 (November 7, 1980), incorporating text at Final Rulemaking published at 27 DCR 3347 (August 1, 1980); and by Final Rulemaking published at 37 DCR 5691 (August 31, 1990).

505 EXTENSION OF TIME FOR FILING RETURNS

- 505.1 The Deputy Chief Financial Officer may, in his or her discretion, for good cause shown grant to a party to a deed a reasonable extension of time not to exceed six (6) months for the filing of a return by that party.

- 505.2 The party seeking an extension must apply to the Deputy Chief Financial Officer for the extension in writing, stating the reason(s) for the extension and any other information required by the Deputy Chief Financial Officer.
- 505.3 If an extension of time for filing has been granted, the Deputy Chief Financial Officer shall notify the Recorder of Deeds in writing of the action.
- 505.4 The Recorder of Deeds, upon receipt of a return from each of the other parties to the deed and payment of the applicable tax, shall (if the deed is otherwise recordable) be authorized to record the deed without the filing of a return by the party to whom an extension has been granted.

SOURCE: Commissioners' Order 62-751 effective April 26, 1962, 8 DCR 278 (May 14, 1962).

506 WAIVER OF THE FILING OF A RETURN

- 506.1 If the Deputy Chief Financial Officer determines that a party to a deed cannot file a return, the Deputy Chief Financial Officer, in his or her discretion, may waive the filing requirement for that party. The Deputy Chief Financial Officer may require any affidavits, documents, and statements to be submitted that the Deputy Chief Financial Officer deems necessary for a determination whether a waiver should be granted.
- 506.2 A waiver granted to one party shall not, unless specifically stated in the waiver, be deemed to be a waiver as to any other party. The waiver shall not affect the requirement for payment of the tax on the deed at the time the deed is submitted for recordation.
- 506.3 Upon notification in writing from the Deputy Chief Financial Officer that a waiver has been granted, the Recorder of Deeds is authorized to record the deed (if the deed is otherwise recordable) without the filing of a return by the party to whom the waiver applies.

SOURCE: Commissioners' Order 62-751 effective April 26, 1962, 8 DCR 278 (May 14, 1962).

507 SECURITY FOR PAYMENT OF TAX

- 507.1 If it is determined that a deed submitted for recordation cannot be recorded by reason of failure of the parties to file a proper return or by reason of question about the correct amount of tax, the Deputy Chief Financial Officer is authorized to accept such security in such form(s) as, in the discretion of the Deputy Chief Financial Officer, may be necessary to ensure that the tax which is or may be applicable to the transfer is paid.
- 507.2 Upon being notified of the acceptance of the security by the Deputy Chief Financial Officer, the Recorder of Deeds shall record the deed if it is otherwise recordable.
- 507.3 After accepting the security and notifying the Recorder of Deeds, the Deputy Chief Financial Officer shall determine the applicable tax.

- 507.4 Upon payment of the tax due, the Deputy Chief Financial Officer shall return the security to the person or persons from whom it was obtained.
- 507.5 If payment of the tax is not made, the Deputy Chief Financial Officer shall, so far as is possible, collect the tax out of the security previously paid to the Deputy Chief Financial Officer. If there is any excess security, the Deputy Chief Financial Officer shall return that excess to the person or persons from whom it was obtained.
- 507.6 If the security is inadequate for collection of the entire amount of tax, the parties to the deed shall be liable jointly and severally for the balance of the tax due.

SOURCE: Commissioners Order 62-751 effective April 26, 1962, 8 DCR 278 (May 14, 1962).

508 INSPECTION OF RETURNS AND OTHER DOCUMENTS RELATED TO DEEDS

- 508.1 Except as otherwise provided in the Act or this section, all returns and other documents pertaining to deeds filed with the Recorder of Deeds or the Deputy Chief Financial Officer pursuant to the Act or this chapter shall be available for inspection only to the following:
- (a) The person or persons filing the return or document;
 - (b) An official or employee of the District who has duties and responsibilities in connection with those returns or documents;
 - (c) An official of the government of the United States when acting in his or her official capacity; or
 - (d) An official of a state or political subdivision of a state when acting in his or her official capacity, if similar privileges are accorded to District audit officials by that state or political subdivision.
- 508.2 Information on the amount of tax paid upon the recordation of a deed shall be available to the public.

SOURCE: Commissioners' Order 62-751 effective April 26, 1962, 8 DCR 278 (May 14, 1962).

509 NAKED TITLE DEEDS

- 509.1 Where the grantee named in a recorded deed upon which the applicable tax has been paid acted as a nominal grantee for the sole purpose of holding, on behalf of another person, naked title to the property described in the deed, a deed to that property subsequently executed by the nominal grantee, without consideration, naming as grantee the person on whose behalf the nominal grantee acted, shall be exempt from tax as a deed which, without additional consideration, confirms, corrects, modifies, or supplements a deed previously recorded.

- 509.2 Where the owners of an estate in real property have, for the sole purpose of changing their estate (for example, in the case of a change from a tenancy in common to a joint tenancy) executed a deed to a nominal grantee holding naked title to the property, who, in turn, and without consideration, executes a deed to the same owners so as to effect the change of estate desired, the deeds so executed shall be exempt from tax as deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded.
- 509.3 Where exemption is claimed under this section, the right to the exemption must be established to the satisfaction of the Deputy Chief Financial Officer upon the presentation to the Deputy Chief Financial Officer of such returns, documents, and other information as the Deputy Chief Financial Officer, in his or her discretion, may require.

SOURCE: Commissioners' Order 62-751 effective April 26, 1962, 8 DCR 278 (May 14, 1962).

510 CONSTRUCTION LOAN AND PERMANENT LOAN DEEDS OF TRUST AND MORTGAGES

- 510.1 On construction loan deeds of trust or mortgages and permanent loan deeds of trust or mortgages, the amount of consideration for the purposes of the tax imposed by the Act shall be an amount equal to the principal amount of indebtedness.
- 510.2 In any case in which the amount which may be secured under the deed of trust or mortgage is not ascertainable, the tax shall be based upon the fair market value of the property conveyed, determined as of the date of the deed of trust or mortgage, but including the value of any realty required by the terms of the deed of trust or mortgage to be constructed on the property.
- 510.3 Within thirty (30) days after the execution of a deed or other document by which a security interest in real property is given pursuant to a construction loan deed of trust or mortgage or a permanent loan deed of trust or mortgage, all transferees of secured interests shall record a fully acknowledged (notarized) copy of that deed of trust or mortgage, including the lot and square number of the real property transferred or encumbered, with the Recorder of Deeds.

SOURCE: Final Rulemaking published at 27 DCR 4929 (November 7, 1980), incorporating text of Proposed Rulemaking published at 27 DCR 3347, 3348 (August 1, 1980).

511 DEEDS ISSUED PURSUANT TO FORECLOSURE PROCEEDINGS

- 511.1 Any deed which is issued pursuant to a foreclosure sale and submitted for recordation shall be subject to the tax imposed pursuant to §303 of the Act (D.C. Code §45-923) regardless of the identity of the grantee named in the deed, including a grantee who is the original secured party or mortgagee under the deed of trust or mortgage which secured the debt or other obligation on the property in question.

- 511.2 Any deed which is issued in place of a foreclosure sale and submitted for recordation shall be subject to the tax imposed pursuant to §303 of the Act (D.C. Code §45-923) regardless of the identity of the grantee named in the deed, including a grantee who is the original secured party or mortgagee under the deed of trust or mortgage which secured the debt or other obligation on the property in question.
- 511.3 For purposes of this section, the measure of the tax shall be the consideration for the deed as provided in §303 of the Act.
- 511.4 The provisions of §502 of this chapter shall apply to this section.

SOURCE: Final Rulemaking published at 27 DCR 5929 (November 11, 1980), incorporating text of Proposed Rulemaking published at 27 DCR 3347 (August 1, 1980); as amended by Final Rulemaking published at Final Rulemaking published at 31 DCR 1205 (March 9, 1984).

512 RECORDATION OF REVOCABLE TRUST DEEDS

- 512.1 Any deed which transfers naked legal title to real property to a trustee by a settlor who retains a right of revocation shall be subject to the tax imposed pursuant to §303 of the Act (D.C. Code §45-923), unless otherwise exempt under the Act of this chapter.
- 512.2 For the purposes of this section, the measure of the tax shall be the consideration for the deed as provided in §§303 and 304 of the Act. (D.C. Code §§45-923 and 924).
- 512.3 If the settlor of a revocable trust deed who retains a right of revocation exercises such right of revocation, and the trustee thereby executes a deed which transfers legal title from the trustee back to the settlor as beneficial owner, the deed shall be exempt from the deed recordation tax pursuant to §302(6) of the Act (D.C. Code §45-922(6)), as a deed which without additional consideration, confirms, modifies, or supplements a deed previously recorded.

SOURCE: Final Rulemaking published at 32 DCR 327 (January 18, 1985).

513 [RESERVED]

514 [RESERVED]

515 RECORDATION OF ECONOMIC INTERESTS

- 515.1 A transfer of an economic interest in real property located in the District shall occur upon the conveying, vesting, granting, bargaining, sale, or assignment of a controlling interest in any corporation, partnership, association, trust, or other unincorporated entity that is subject to the Act.

- 515.2 A deed shall be filed by any entity that is subject to the Recordation of Economic Interests Act whenever a transfer of an economic interest in the entity occurs.

SOURCE: Final Rulemaking published at 36 DCR 8653, 8654 (December 29, 1989).

516 ENTITIES SUBJECT TO THE RECORDATION OF ECONOMIC INTERESTS ACT

- 516.1 Any corporation, partnership, association, trust or other unincorporated entity shall be subject to the recordation tax if it, during the twelve (12) month period immediately preceding the transfer of an economic interest in real property located in the District:

- (a) Derives more than fifty percent (50%) of its annual gross receipts from the ownership or disposition of real property located in the District; or
- (b) Holds, on the date of the transfer of an interest, real property located in the District, the value of which comprises eighty percent (80%) or more of the value of its entire tangible asset holdings.

- 516.2 In determining whether an entity derives more than fifty percent (50%) of its annual gross receipts from the ownership or disposition of real property located in the District, in transfers that are aggregated, the date of the most recent transfer aggregated shall govern when the twelve (12) month period shall end.

- 516.3 Gross receipts from the ownership or disposition of real property shall include, but is not limited to, the following:

- (a) Rents from real property; or
- (b) Gain from the sale or other disposition of real property.

- 516.4 The Deputy Chief Financial Officer shall use the fair market value of both the entity's real property assets and assets other than real property on the date of each transfer in determining whether an entity's real property located in the District comprises eighty percent (80%) or more of the value of its entire tangible asset holdings.

Example: X corporation, a publicly-held manufacturing corporation in New York, owns a warehouse in Virginia valued at two hundred thousand dollars (\$200,000), a manufacturing plant in Maryland valued at three hundred thousand dollars (\$300,000), an office building in the District valued at three million two hundred thousand dollars (\$3,200,000), and various equipment and assets valued at three hundred thousand dollars (\$300,000). X corporation is subject to the tax because it holds real property in the District, the value of which comprises eighty percent (80%) or more of the value of its entire tangible asset holdings.

- 516.5 In deciding whether the eighty percent (80%) test is met, the Deputy Chief Financial Officer may accept a determination of value of the real property and other assets that reasonably reflects the fair market value of the assets.

- 516.6 If the Deputy Chief Financial Officer decides that a determination made pursuant to §516.5 does not reasonably reflect the fair market value of the property, the Deputy Chief Financial Officer may disallow the determination and use any method that the Deputy Chief Financial Officer decides will result in a reasonable determination of the fair market value of the assets.
- 516.7 The Deputy Chief Financial Officer may request the following items, among others, as the Deputy Chief Financial Officer decides is relevant to determine whether an entity is subject to the transfer tax:
- (a) Income-Expense reports filed pursuant to D.C. Code §47-821;
 - (b) Federal Income tax Returns (subject to confidentiality requirements imposed by D.C. Code §47-1805.4; and
 - (c) Books and records of the entity.

SOURCE: Final Rulemaking published at 36 DCR 8653, 8654 (December 29, 1989).

517 TRANSFERS OF CONTROLLING INTERESTS

- 517.1 A transfer of an economic interest shall occur upon the conveyance of a controlling interest of any legal, equitable, beneficial or other ownership interest in the following:
- (a) The shares of stock in a corporation;
 - (b) A partnership, association or other unincorporated entity; or
 - (c) A trust.
- 517.2 For the purposes of this chapter, a controlling interest in the case of a corporation means:
- (a) More than fifty percent (50%) of the total combined voting power of all classes of stock of the corporation; or
 - (b) More than fifty percent (50%) of the total fair market value of all classes of stock of the corporation.
- 517.3 For the purposes of this chapter, a controlling interest in the case of a partnership, association, trust or other entity means more than fifty percent (50%) of the capital, profits or beneficial interests in the partnership, association, trust or other entity.
- 517.4 A controlling interest may be transferred by conveyance, vesting, granting, bargaining, sale, or assignment.

517.5 A conveyance may include any of the following:

- (a) Surrender;
- (b) Mortgage or deed of trust;
- (c) The contribution of an interest in an entity to a trust;
- (d) Liquidations;
- (e) The withdrawal or addition of a member of a partnership, association or other unincorporated entity; or
- (f) Any other transaction in which a beneficial interest is transferred.

Example (1): X corporation owns real property located in the District of Columbia, the value of which comprises more than eighty percent (80%) of the value of its entire tangible asset holdings. A, B, and C each own one-third (1/3) interests of X corporation stock. A buys B and C's interests to acquire a one hundred percent (100%) interest in X corporation. A's purchase of B and C's interests must be recorded and is subject to the recordation tax.

Example (2): A and B are equal partners in a partnership. Over a twelve (12) month period the partnership adds eight (8) new equal partners. Partners C and D are admitted on January 1st, Partner E is admitted on March 1st and Partners F through J are admitted on May 1st. The addition of the third new partner, E, has the effect in the aggregate of transferring more than fifty percent (50%) of the total ownership interest in the partnership. The admission of partner E is a transfer of a controlling interest. However, a new twelve (12) month period starts whenever the tax is triggered (March 1st in our example) and the percentages of ownership acquired by the first, second and third new partners will not be considered or aggregated with the percentages acquired by the fourth or subsequent new partners.

517.6 Transfers of controlling interests may include transfers of interests in entities related to the entity owning the real property located in the District, including the following:

- (a) Entities that are partners and shareholders of the entity owning the real property;
- (b) Entities that are beneficiaries of the entity owning the real property;
- (c) Entities that derive, directly or indirectly, any portion of their receipts from ownership of the entity owning the real property; or
- (d) Entities that hold as an asset any legal, equitable, beneficial or other ownership interest, whether directly or indirectly, of the entity owning the real property.

Example: Corporation A is a holding company whose sole asset is one hundred percent (100%) of the stock of Corporation B. Corporation B owns real property located in the District, the value of which comprises more than eighty percent (80%) of its entire tangible asset holdings. The transfer of a controlling interest in Corporation A is subject to the recordation tax.

- 517.7 Ownership of notes or other receivables secured by interests in real property shall not result in the characterization of an entity as an entity with an interest in real property for purposes of this Act.

Example: X corporation holds notes or other receivables secured by real property located in the District. X holds no other interest in real property. The transfer of fifty-one percent (51%) of X corporation stock shall not be subject to tax.

SOURCE: Final Rulemaking published at 36 DCR 8653, 8655 (December 29, 1989).

518 AGGREGATION OF TRANSFERS

- 518.1 For transfers executed on or after October 1, 1989, the Deputy Chief Financial Officer shall aggregate all transfers of interests in an entity subject to the Recordation of Economic Interests Act that are made within the twelve (12) month period prior to the most recent transfer in order to determine whether a controlling interest has been transferred.

- 518.2 If a transfer of an interest in an entity that is subject to the Recordation of Economic Interests Act occurs, the entity shall submit information concerning any transfers occurring during the previous twelve (12) months.

- 518.3 A controlling interest is transferred if the total aggregate percentage of interests transferred is more than fifty percent (50%) of the total percentage of the entity during any period of twelve (12) consecutive months, starting with the most recent transfer and counting back twelve (12) months.

Example: X corporation owns real property in the District, the value of which comprises more than eighty percent (80%) of its entire tangible asset holdings. A, B, C, D and E each own a one-fifth (1/5) interest in X corporation's outstanding stock. A sells his entire one-fifth (1/5) interest on November 20, 1989. B sells his entire interest on May 18, 1990, and C sells his entire interest on November 10, 1990. All the transfers made within the twelve (12) month period that concluded on November 10, 1990, shall be aggregated to determine whether a controlling interest has been transferred. Accordingly, since more than fifty percent (50%) of X corporation's stock was transferred within a twelve (12) month period, X corporation must record a deed evidencing the transfer, and pay the tax.

- 518.4 The Deputy Chief Financial Officer shall examine separately each transfer of an interest in an entity subject to the Recordation of Economic Interests Act to determine what percentage of the entity has been transferred.

Example: X corporation is owned equally by A, B, and C, and holds real property located in the District. On May 15, 1990, A sells her stock to D. On August 30, 1990, C sells her stock to D. C's transfer when combined with the transfer of A's interest constitutes a transfer of a controlling interest. During the period from August 31, 1989, through May 15, 1990, X corporation's only asset was real property located in the District. In July, 1990,

X corporation acquired non-real property assets, the value of which comprised fifty percent (50%) of X corporation's total asset value. During the period from August 31, 1989, through August 30, 1990, X corporation derived more than fifty percent (50%) of its gross receipts from income generated by real property located in the District. The transfer of C's stock to D on August 30, 1990, will subject X corporation to the recordation tax, because at the time of the transfer, X was an entity subject to the recordation tax based on the income test. If during the period from August 1, 1989, through August 30, 1990, X corporation did not derive more than fifty percent (50%) of its gross receipts from income generated by real property located in the District, then the transfer of C's stock to D on August 30, 1990, would not be subject to the tax because X corporation did not derive more than fifty percent (50%) of its gross income from property located in the District nor did it meet the eighty percent (80%) asset test on the date of the transfer of the controlling interest.

518.5 If the same interest in an entity is sold more than once during the twelve (12) month period, the transactions involving the sale of that interest shall not be aggregated with each other.

518.6 Transfers of interests in entities subject to the Recordation of Economic Interests Act that occur more than twelve (12) months apart shall be aggregated if the transactions resulting in the transfer of interests are bargained for during any one twelve (12) month period.

Example: X corporation owns real property in the District. A, B and C each own one-third (1/3) of X corporation's outstanding stock. A and B bargain with D to sell their entire interest in X to D. B's sale occurs two (2) years after A's sale. A and B bargained to sell a controlling interest which must be recorded even though the actual sale was not consummated within twelve (12) months.

518.7 The Deputy Chief Financial Officer may request information for a period of up to three (3) years from the transfer in question to determine whether transactions occurring over more than a twelve (12) month period were bargained for during a twelve (12) month period.

518.8 A bargain, within the meaning of this chapter, includes an agreement to transfer an interest in an entity subject to the Recordation of Economic Interests Act, if the bargain is consummated.

SOURCE: Final Rulemaking published at 36 DCR 8653, 8657 (December 29, 1989).

519 CONSIDERATION ALLOCABLE TO REAL PROPERTY

519.1 The deed recordation tax is imposed upon the portion of the consideration from a transfer of an economic interest that is allocable to the value of the real property held by the entity subject to the Transfer of Economic Interests Act.

519.2 The allocation between the real property and the other assets of the entity shall be based upon the same allocation determined by the Deputy Chief Financial Officer to be reasonable under §§516.5 and 516.6 of this chapter.

519.3 Consideration shall include the amount of any mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed.

Example: X corporation owns real property located in the District valued one million dollars (\$1,000,000) encumbered with a three hundred thousand dollars (\$300,000) mortgage, and machinery valued at five hundred thousand dollars (\$500,000). Ninety percent (90%) of X's gross receipts during the relevant period was from the real property. One hundred percent (100%) of the stock of X corporation is sold for one million two hundred thousand dollars (\$1,200,000) in cash. The value of the real property, one million dollars (\$1,000,000), is two-thirds (2/3) of the value of all of X corporation's assets, one million five hundred thousand dollars (\$1,500,000). The consideration includes the three hundred thousand dollars (\$300,000) mortgage that was assumed. Two-thirds (2/3) of the consideration, one million dollars (\$1,000,000), will be subject to the tax.

- 519.4 The Deputy Chief Financial Officer shall determine the consideration allocated to the real property for each separate transaction that is aggregated to determine the total consideration subject to the tax.
- 519.5 For aggregated transfers, the Deputy Chief Financial Officer shall use the fair market value of the properties at the time of each transfer to determine the total consideration subject to the tax.

Example: X corporation is owned equally by A, B and C. X owns real property located in the District with a tax assessed value of nine hundred thousand dollars (\$900,000), and assets other than real property valued at one hundred thousand dollars (\$100,000). On January 15, 1990, A sells her stock to D for three hundred thousand dollars (\$300,000). On June 20, 1990, X renovates the real property, which increases the estimated fair market value to one million nine hundred thousand dollars (\$1,900,000). On August 4, 1990, B sells his stock to D for five hundred thousand dollars (\$500,000). The transfer from B to D is a transfer of a controlling interest. The portion of the consideration of A's transfer to D that is subject to the recordation tax is two hundred seventy thousand dollars (\$270,000). One-tenth (1/10) of the value of the assets at the time of the sale, thirty thousand dollars (\$30,000), is attributable to non-real property assets, therefore, one-tenth (1/10) of the purchase price of the stock is excluded from the tax. The portion of the consideration of B's sale to D that is subject to the tax is four hundred seventy-five thousand dollars (\$475,000). One-twentieth (1/20) of the purchase price of the stock at the time of sale, twenty-five thousand dollars (\$25,000), is attributable to assets other than real property and is excluded from the tax.

SOURCE: Final Rulemaking published at 36 DCR 8653, 8659 (December 29, 1989).

520 MERGERS, CONSOLIDATIONS AND LIQUIDATIONS

- 520.1 The merger or consolidation of an entity that is subject to the Recordation of Economic Interests Act with another entity may result in a taxable transfer.

Example (1): Corporation X, wholly owned by A, and which holds as its only asset real property in the District, merges with Corporation Y, owned by B and C, which holds as its only asset cash. The surviving corporation is owned equally by A, B, and C. The merger subjects the surviving corporation to the recordation tax, because a controlling interest was transferred within the meaning of the Act.

Example (2): Corporations W, X and Y hold real property located in the District as their only assets. There are no identical or related ownership interests in any of the corporations. The three (3) corporations consolidated forming corporation Z owned equally by the prior shareholders of W, X and Y. Corporation Z is required to record the transfers and pay the

tax because more than fifty percent (50%) of the controlling interest in each of the respective corporations was transferred.

- 520.2 A transfer to a parent in complete liquidation of a wholly owned subsidiary that is subject to the Recordation of Economic Interests Act shall not be considered a transfer of an economic interest.

SOURCE: Final Rulemaking published at 36 DCR 8653, 8661 (December 29, 1989).

521 [RESERVED]

522 TRUSTS

- 522.1 A transfer of a controlling interest in a trust shall not include transfers of equitable interests between beneficiaries that occur as a result of the operation of the terms of the trust, unless circumstances show that the trust was established to avoid taxation of the transfer of real property.

- 521.2 Mere substitution of trustees shall not be subject to the Recordation of Economic Interests Act.

SOURCE: Final Rulemaking published at 36 DCR 8653, 8661 (December 29, 1989).

523 MISCELLANEOUS

- 523.1 A transfer of a controlling interest from one (1) entity to another in which there is no change in ownership interest shall not be subject to the Recordation of Economic Interests Act.

- 523.2 New stock certificates issued to owners of record of a corporation based solely on a change in the name of the corporation shall not be subject to the recordation tax.

- 523.3 The transfer of a controlling interest by a corporation to its wholly-owned subsidiary, from a wholly-owned subsidiary to its parent, or from one wholly-owned subsidiary to another shall be considered a change of identity and not subject to the Recordation of Economic Interests Act.

- 523.4 The exclusion of a transfer from recordation under the Recordation of Economic Interests Act shall not prevent the same transfer from being subject to taxation under any other Act or rule of law.

SOURCE: Final Rulemaking published at 36 DCR 8653, 8661 (December 29, 1989).

524 REPORTING TRANSFERS

- 524.1 Every corporation that owns real property in the District comprising at least forty percent (40%) of its gross assets shall keep a record of the transfer of its stock and report every transfer of an interest of its stock on an income and expense form under 9 DCMR §330.
- 524.2 Every partnership, trust, estate or other entity having interest in real property in the District comprising at least forty percent (40%) of its gross assets shall keep a record of and report every transfer of interests in its capital, profits or beneficial interests on an income and expense form under 9 DCMR §330.
- 524.3 The Deputy Chief Financial Officer may request supplemental information to be submitted to substantiate whether a transfer of an economic interest has occurred.

SOURCE: Final Rulemaking published at 36 DCR 8653, 8662 (December 29, 1989).

525 FILING REQUIREMENTS

- 525.1 A deed, in the form prescribed by the Deputy Chief Financial Officer, shall be filed within thirty (30) days of a transfer of an economic interest by the entity in which the transfer has occurred.
- 525.2 The form of deed to record transfers of economic interests and accompanying returns shall be available at the Office of Recorder of Deeds.
- 525.3 Deeds and accompanying returns evidencing transfers of economic interests shall be subject to rules for filing with the Recorder of Deeds as found in §§502 through 508 of this chapter.

SOURCE: Final Rulemaking published at 36 DCR 8653, 8662 (December 29, 1989).

526 LEASES

- 526.1 A lease for more than ninety-nine (99) years shall be treated as a fee for purpose of this chapter.
- 526.2 For the purpose of determining the length of a lease term, options to renew shall be included.
- 526.3 Consideration for a lease in excess of ninety-nine (99) years shall be the amount of the assessed value of the property at the date of the transaction.

SOURCE: Final Rulemaking published at 36 DCR 8653, 8663 (December 29, 1989).